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ing school corporation without prior notice to the forwarding school corporation since same usually results by action of some court. The receiving school corporation must register each new pupil in its school, and it is in a position to ascertain the required facts and figures and submit them in accordance with accepted procedures by filing a claim with the proper county council. At any rate, it would definitely appear that unless the statute expressly prescribes the manner by which such transfer tuition charges shall be collected by the receiving school corporation, that such should be accomplished by accepted and established administrative procedures.

In summary, if a transfer of school children is involved under conditions and circumstances as heretofore considered from one school corporation to another school corporation, then the county council of the county in which the children have attained a legal settlement or domicile is required to pay the appropriate transfer tuition charges. The answer to questions one (1) and two (2) is yes, and the answer to your question three (3) is no. As to question number four (4), it is my further opinion that it would be impractical to require an order of transfer from the forwarding school corporation in situations here under consideration and that Acts 1921, ch. 253, as amended, *supra*, do not specifically require same.

OFFICIAL OPINION NO. 5

April 1, 1966

DEPARTMENT OF MENTAL HEALTH—Use of State Funds to Construct or Operate Out-of-State Mental Health Centers.

Opinion Requested by Dr. S. T. Ginsberg, Mental Health Commissioner.

This is in response to your request for my Official Opinion in answer to the question of whether certain funds "can be

utilized for the construction of facilities and the cost of operation of mental health and mental retardation services outside of the State of Indiana?" The funds with which your request is concerned consist of both county and state tax revenues.

Your question is occasioned on account of practical considerations in providing mental health and mental retardation services to Indiana residents who live near the Indiana state boundary so that such services could possibly best be provided by a facility situated near such boundary line, but located in an adjoining state. As illustrative of the basis for your request is the following from your letter:

"A case in point is our Cincinnati mental health and mental retardation planning region. This is a region consisting of six counties (Dearborn, Decatur, Franklin, Ohio, Ripley and Switzerland) in the southeast corner of Indiana, closely related to Cincinnati and normally utilizing the City of Cincinnati for major health needs. Sound planning indicates that major mental health and mental retardation services can best be provided from Cincinnati. It does not appear to be practical at this point in time for these counties to develop comprehensive services within their county boundaries."

I. The county tax revenues involved are those which are authorized by Acts 1965, ch. 48, Sections 1, 2, and 3, as found in Burns IND. STAT. ANN., §§ 22-3015, 22-3014, and 22-3016, §§ 2 and 3 of which provide that the county council may appropriate annually from the county general fund, for the purpose of constructing and/or operating either a community mental health center or community mental retardation center, a sum of money equivalent to that which could be collected from an annual levy of ten cents (10¢) on each one hundred dollars (\$100.00) of taxable property within the county.

This Act provides as follows:

"SECTION 1. As used in this act the terms '*community mental health center*' and '*community mental retardation center*' shall mean a community center

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approved by the department of mental health *and incorporated under the provisions of 'The Indiana general not for profit act,'* and organized for the purpose of providing services for the mentally disordered.

“SEC. 2. The board of county commissioners for a county may authorize the furnishing of financial assistance to any community mental health center or any community mental retardation center *located, or which may hereafter be located, in the county* for the purpose of constructing and/or operating the center. The county council of the county, upon request of the board of county commissioners, may appropriate annually, from the general fund of the county, funds to provide financial assistance for construction and/or operation of the center in an amount of not to exceed the amount which could be collected from the annual levy up to a ten [10¢] cent tax on each one hundred dollars [\$100.00] of taxable property within the county.

“SEC. 3. In cases where a *mental health center or a mental retardation center is incorporated to provide services to two or more counties,* the board of county commissioners of each county may authorize the furnishing of financial assistance for the purpose of constructing and/or operating the center, and the county council of each county, upon the request of the board of county commissioners of the county, may appropriate annually, from the general fund of the county, funds to provide financial assistance for construction and/or operation of the center in an amount of not to exceed the amount which could be collected from the annual levy of a ten [10¢] cent tax on each one hundred dollars [\$100.00] of taxable property within the county.” (Emphasis added.)

Although the above-quoted Acts 1965, ch. 48 is worded as an independent, rather than an amendatory act, the previous statute providing for the appropriation of county funds to furnish financial assistance to a community mental health center or a community mental retardation center was the Acts

1963, ch. 300, Burns IND. STAT. ANN., §§ 22-3013 and 22-3012, § 2 of which provided as follows:

“SEC. 2. The board of county commissioners of a county may authorize the furnishing of financial assistance to any community center for the mentally retarded *located, or which may hereafter be located, in the county*; and the county council of the county, upon the request of the board of county commissioners, may appropriate annually, from the general fund of the county, funds to provide financial assistance in an amount of not to exceed the amount which could be collected from the annual levy up to a 2 cent [2¢] tax on each one hundred dollars [\$100] valuation of taxable property.” (Emphasis added.)

By comparing Section 2 of the former Acts of 1963, ch. 300 with Section 2 of Acts 1965, ch. 48, although the maximum amount of appropriation which may be made from the county general fund for such centers has been increased five times, it will be noted that the 1965 Legislature has (in referring to such centers) retained from the 1963 version the language: “. . . located or which may hereafter be located, *in the county* . . .”

A further comparison of said acts discloses the following:

Acts 1963, ch. 300 authorized only such financial assistance from the county to any such center located, or which may hereafter be located, in the county furnishing such financial assistance. However, the 1965 Legislature apparently realized not only the need for increasing the maximum amount of county funds for such purpose, but also the practicality of such a center in one county providing mental health and mental retardation services to residents of another county by authorizing such other counties to furnish financial assistance to such centers as may be authorized to provide those services to the residents of more than one county. This is the effect of Section 3 of Acts 1965, ch. 48—a situation for which no provision was made in the comparable 1963 Act. However, the implication is clear in said Section 3, Acts 1965, ch. 48 that the mental health center or mental retardation center to

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which reference is made therein is one located in Indiana for it must be "incorporated" and Section 1 of that Act requires that it be incorporated under the provisions of "The Indiana General Not For Profit Act."

There is no language in said 1965 Act which can be construed as authorizing expenditure of any part of such county funds in the construction or use of such a center located outside of the State of Indiana.

II. The state funds with which your request is concerned are derived from Acts 1965, ch. 225, § 6, as found in Burns IND. STAT. ANN., § 64-2928e, which provides as follows:

"SEC. 6. Acts 1947, c. 222, is further amended by adding a new and additional section thereto to be numbered 27e and to read as follows: Sec. 27e. Two-thirds of the amount in the cigarette tax fund of the State of Indiana accumulated between the dates of May 1, 1965 and July 1, 1965 is hereby appropriated to the Department of Mental Health to create a comprehensive *Mental Health Centers Fund for the uses and purposes as set out in budget bill of the 94th Indiana General Assembly.*" (Emphasis added.)

The "budget bill of the 94th Indiana General Assembly" is Acts 1965, ch. 191, and the Mental Health Centers Fund (referred to by Acts 1965, ch. 225, Sec. 6, *supra*) is also provided for by said Chapter 191 on page 397, Acts 1965, upon which page it is stated:

"A comprehensive Mental Health Centers Fund shall be created by the Department of Mental Health to *match funds provided from local, federal or other sources* to construct or operate comprehensive mental health centers for the benefit of the mentally ill or retarded.

"The monies for this fund shall be *only* those accumulated under legislation passed in the 94th Session of the Indiana General Assembly amending an Act entitled 'an Act providing for the raising of public revenue by imposing a tax on cigarettes' the same be-

ing Acts 1947, c. 222, s. 11 as last amended by Acts 1963 (Spec. Sess.), c. 37, s. 3." (Emphasis added.)

While said Budget Act contains provisions for other appropriations for the support of local mental health clinics, and for other needs connected with the overall mental health program, the only language in said Acts 1965, ch. 191, referring to mental health centers is that language above-quoted, providing that the only monies for said fund are those raised pursuant to Acts 1965, ch. 225, § 6 *supra*. Apparently, the mental health centers referred to in said language are those which are organized under the "Indiana General Not For Profit Act" as provided by Acts 1965, ch. 48 and the former Acts of 1963, ch. 300.

There is no language in either Acts 1965, ch. 225, § 6, or Acts 1965, ch. 191, from which to infer that authority has been granted by the legislature to expend any part of the funds in such Mental Health Centers Fund in the construction or use of such a center located outside of the State of Indiana.

III. As noted in your letter, the federal law providing federal grants for the construction of both mental health centers and mental retardation facilities, contains an express provision with respect to each type of faculty [42 U.S.C. §§ 2682(b) and 2672(b)] by which a state, upon its request, may have a portion of its allotment transferred to the allotment of another state to assist in the construction of such a facility or center when such facility or center in the other state would assist in meeting the needs for mental health services of the residents of the state making such request for transfer.

The two above-cited subsections of the federal law are a part of Public Law 88-164 and first became law on October 31, 1963.

Thus these provisions for the possible use of a specified portion of federal allotments in another state were in effect prior to the convening of the 94th Session of the Indiana General Assembly, and, if the 1965 Legislature had intended for either the county funds provided by Acts 1965, ch. 48, or the state funds provided by Acts 1965, ch. 225, § 6 to have been used outside of the State of Indiana in order to provide such mental health services, it is reasonable to assume that the legislature

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would have clearly so provided for such use, as was done in the case of the federal provisions above-cited.

No particular language is necessary to constitute an appropriation if the effect of such language indicates the purpose for which the money is to be used, its source, the amount of money so appropriated or a method for ascertaining the maximum amount that may be so used and the authority of the proper disbursing official to so expend such sum. *Orbison v. Welsh*, 242 Ind. 385, 403, 179 N.E. 2d 727 (1962). However, such an appropriation must express the above elements to a sufficient degree that the officer (whose duty it is to draw a warrant upon the fund) may be coerced into the performance of that duty and thereby be protected against the possible claim of personal liability for having expended funds under his custody in excess of the amount appropriated or for a purpose not authorized. *Gray v. State*, 72 Ind. 567, 576 (1880).

Therefore, it would seem that the qualifications of community mental health centers or community mental retardation centers (which must exist in order for such centers to be eligible for financial assistance from either such county funds or from the state Mental Health Centers Fund) are provided by Acts 1965, ch. 48 which clearly refers only to such centers as are "located, or which may hereafter be located, in the county," or, in the case provided by Section 3 of that Act, refers to a center incorporated under *Indiana* law to provide mental health services to more than one county—in either case, obviously referring to such a center located in a county in Indiana. Thus, it is my opinion that there is no express authority for such county funds or state funds to be used either to construct such facilities or to provide mental health services for residents of Indiana at a location outside of the State of Indiana, and there is no provision in any of the Indiana statutes herein cited from which that authority could, of necessity, be implied.